P. F. 30 of 98

G. R. S. IX-5]

Previous references. 1897-98

192 .

(L. R.)

File No. 119 of 97

Serial Nos. 1-5

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-5

Major ~~Part B~~ for March 1898

SUBJECT.

Abstract Kaifiyat Return regarding Tahsildars Kamukala. T. Maratisan Tack R.

WD 2283—GPB—20,000—14-6-20

E.B.

Before the Government of Mysore.

Appeal No. 40 of 1897-98.

Appellant.s.	Vs.	Respondent.
1. Kistaniahaiya 2. Nanjaiyah, minor by Guardian, the 1st Appll.		Nanjundaiya alias Pattaiya.

Notices served
14-2-98.

Both parties present.
Case adjd. to 25th inst, and
parties informed of the date.

14/2/98

No sufficient grounds to interfere
have been made out warranting
with the order C/1895 which
has been passed after hearing
all the parties concerned - This
appeal is dismissed as the Dy
Comr has decided the
case in accordance with that
order. 28/2/98

Draft

Reference

Memorandum of Appeal presented by Appellant's Counsel
55 21 / 245 of 25-1-98 registered No.
No. 3 Court in Civil Suit No. 573
also Memo of 12/11 Sept 1893
Printed by Municipality by
Post

HK
13/11/97

Vernacular Records.

119-97-1

3-11.

1897

No. 1068 & 69 of 97-98

Name of Petitioners 1. Kapinipathi
2. Nanjekka minor

Village Sivarampet

Taluk Mysore

District Mysore

Date of Arst 19-10-97

Date of Receipt 27-10-97

Date of Disposal

No. of Enclosure Nil

ABSTRACT.

Appeal against the judgment and decree of the 3rd Court Mysore Sri in the file of this Court in Regular Suit No 105 of 1896-97 reversing judgment and decree of the 1st Court in Regular Suit No 105 of 1894-95 in so far as it dismissed the suit of Plaintiffs of Kasamanahalli in the Mysore Taluk and District for the recovery of Rs 1000 as damages for the illegal attachment of their cattle and for a perpetual injunction as prayed for.

Heard the Respondents Counsel

Heard the Appellants Counsel

Perused the Records

Considered

Decree reversed

Costs

1) Stamps
2) Time
3) Second Appeal
4) Costs

The Appellants Counsel urged that the Subordinate Judge should have decreed what the District Munsif had decreed in July 1893 but on a mere technicality dismissed the suit

Judgment of 2nd Court

19/11/97

the office of the Kannadath
Nambiaji without the amend-
ment to attached thereto and
also that the name of the
~~Respt~~ respts - 1st applt
herein - be entered as a
Kinsman to the office entitled
to succeed on the extinction
of the appellants (respts here)
family - the cost to be borne
by the respts - 1st appellants"

The grounds of appeal are -
(1) That the Judge was wrong
in ~~holding~~ holding that
the applts and the respts are
members of a joint and
undivided family as the
latter their uterine brother
was given in adoption
and was living separate
and enjoying the property
separately.
(2) That the respts have not
proved that the adoptive
family has claim to the
Shambhogi in question
and has acted at any time
and the papers be produced

4 are not genuine and do not establish his title thereto

(3) That the Dy Comr erred in holding that when the Govt appointed respts in 1884, they reserved no right or interest in the land to the family of the appts but they gave it away absolutely to the respts and of the Govt agree with the Dy Comr in the above view, the respts having been in enjoyment of the land adverse to the appts for 12 years, the present suit is within time.

Pray that the judgment and decree of the Dy Comr be reversed and that of the Court of 1st Instance be restored with all costs throughout

Enc 1. Judgment of the Dy Comr appealed against

Enc 2. Decree -

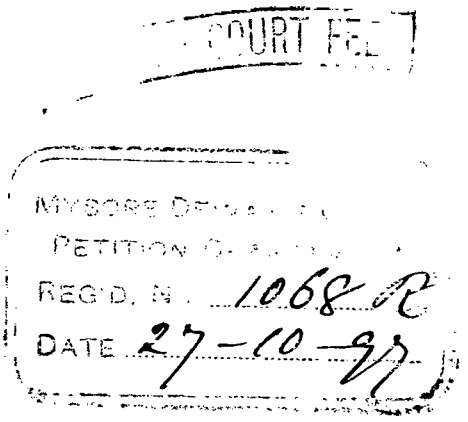
Enc 3. Judgment of the 1st Instance Court

Enc 4 Decree

Recd from Cash Department 27-10-97

5

No. 1068



To.

The Government of His Highness the Maharajah of Mysore.

Appeal against the Judgment and Decree of the Deputy Commissioner of Mysore in Revenue Regular Appeal No. 1 of 1896-97, reversing the Judgment and Decree of the 1st Assistant Commissioner, Mysore District, in Revenue Original Suit No. 1 of 1894-95.

Appellants. 1. Kapanipathiah, son of Kappaiah, residing at Sivarampet, Mysore.
2. Ranjappa, brother of 1st Appellant (minor) by guardian 1st Appellant Plaintiffs).

Vs.

Respondent. Ranjuddiah alias Puttiah, now doing duty as Shanbogue of Kannahalli, Hongur Hobli, T. Narasipur Taluq (Defendant).

The Appellants above named beg to appeal to the Government for the following reasons, namely:-

The Deputy Commissioner erred in holding, without the least foundation for the same that the Plaintiffs and Defendant are members of a joint and

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ER 18—10-97

K. Veera Ra

and undivided family. The Government will be pleased to observe from the record that though defendant is a uterine brother of the Plaintiff's father, he was given away in adoption to another family which was quite distinct and separate for many many years past from the family of Plaintiffs in residence, in food and in estate. The Deputy Commissioner assumed that these two families are joint and undivided, because the Plaintiffs adduced no evidence of partition. These two families having separated themselves in every matter very many years ago, it is beyond the memory of any living man now to say when and how they separated themselves, but residing as they have been for so many years past separately and acquiring and enjoying properties separately, the natural presumption that arises is that the two families so separated themselves as to be quite independent of each other or in other words that the unity once existed ceased to be so. Under such circumstances the burden of proving joint-tenancy lying heavily on the defendant, he has adduced no evidence.

2. The defendant has not proved that the family to which he was adopted ever owned the Khandrige lug in question and did the duties there. The papers he has filed are not proved to be genuine, and further they do not establish

his

his title to the hug in question.

3. The Deputy Commissioner erred in holding that when the government appointed defendant in 1884 they reserved no right or interest in the hug to the family of Plaintiffs, but that they gave it away absolutely to the defendant. The documents on record, the government will be pleased to observe, clearly show that it was not the intention of the government to deprive the family of the Plaintiffs of the hug in question and if that were so, the government would have stated in unmistakable terms that Plaintiffs' family has forfeited the hug in question. The records of the case clearly prove that persons inimically disposed towards Plaintiffs' father made a complaint against him and that it was found to be false. They also show that by reason of the enmity existing between Plaintiffs' father on the one hand and his accusers on the other, the government thought it fit to remove Plaintiffs' father from office but to appoint such one of his heirs as could do the duties without the interference of the Plaintiffs' father. The 1st Plaintiff being then very young and being unable to do the duty, the defendant

was

was appointed in 1884 and his appointment was not absolute as the Deputy Commissioner think it to be. Should the Government agree with the Dy. Commissioner that the Defendant's appointment was absolute, the Appellants beg to urge that the present suit having been filed within 12 years from the date of Defendant's appointment and the Defendant not having enjoyed the hug adversely to Plaintiffs for 12 years, the Defendant has not acquired any valid title to the hugs as against the Plaintiffs and the present suit is clearly within time.

4 The Barabalithi Register Exhibit B. produced in the case conclusively establishes Plaintiffs' absolute title to the Chandragi kuk; but the Deputy Commissioner assumes, without any kind of evidence whatsoever, that the said Register was written by the Chandragne himself. The Government will be pleased to observe that the Barabalithi Registers are, as a matter of fact always prepared and kept not by the Chandragues but by the Taluk authorities. The Barabalithi Register Exhibit B coming as it does from the proper custody i.e. from the Taluq Cutcherry, the Dy. Commissioner erred in refusing to act upon it, and the way

in which he has tried to get out it is not in the least warranted by the facts and circumstances of the case.

5. The record of the case clearly show that Plaintiffs Grand father was chamberque and was doing duty till 1865, that from 1865 to 1869, the eldest brother of Plaintiffs father did the duty and that from 1869 to 1884 ~ Plaintiffs father was chamberque and did the duty. The exhibit **C** clearly proves that when Plaintiffs uncle succeeded his father (Plaintiffs grand father) in 1865, the defendant attempted and strove hard to get himself appointed as chamberque and that the defendant was referred to a Regular suit for the establishment of his right, if any, to the office and for the recovery of the same. This conduct of the defendant clearly shows that the ~ Plaintiffs family and the family to which defendant was adopted was quite distinct and separate and independent of each other. The defendant has not shown that previous to 1884, he, or any body through whom he claims ever did the duties of the chamberque in question or ever shared in the perquisites thereof. The defendant, even supposing he had

had some imaginary title to the hug, having slept over his rights from 1865 to 1884 for a period of nearly 19 years and the Plaintiffs father and uncle and grandfather having enjoyed the hug adversely to the Defendant for scores of years past, the Plaintiffs family acquired a valid and an indefeasible title to the hug. The Defendant having come upon the hug in 1884 only recently through the interference of the Government, has not acquired any valid title to the hug against the Plaintiffs.

6. The Plaintiffs having thoroughly proved their case beyond the shadow of a doubt and the Defendant having utterly failed to make out a case for him and to establish his supposed title to the hug, the Deputy Commissioner erred in reversing the judgment and decree of the Lower Court.

For these reasons the Appellants pray that the Government may be pleased to reverse the decree of the Deputy Commissioner and restore that of the Court of the 1st instance with all costs throughout.

Dated 19th October 1897.

Sings. &c.

M. Kapaniahiahia
1st Appellant.

Pet
F. 30-93

Pv (9)

22-12-97

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT.

L.R 119-97-2

OFFICIAL MEMORANDUM.

The accompanying Appeal Petition Registered No. 1065 dated 19-10-97 received at the Dewan's Office from Kapinapathi and his brother Nanjappa, residing at Sri Rampet Mysore, appealing against the order of the Lower Mysore Court rejecting the judgment and decree of the 1st Appeal Court regarding the Shanbhog ship of Kamalahalli in the Nanjangud taluk

is forwarded, together with its four enclosures, to the Deputy Commissioner of the Mysore District for submission of the entire proceedings connected with the case.

2. The petition with its enclosures should be returned.

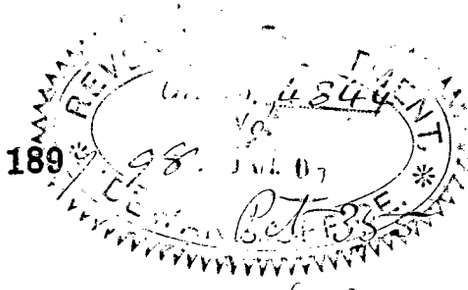
By Order,

Chief Secretary.

BANGALORE,
31-12-1897
22

18-12-97

M.G.C.P.B.—25-4-95—1,000



Secretariat Correspondence

107/98.

12 From

The Deputy Commissioner,
Mysore District.

(10)

Posted to 14th February 1898

To

The Secretary to the Govt. of Mysore,
Revenue and General Departments.

L.R. 119-97-3

Dated 31
Despatched
Received January 1898.
General No. 771
No.

Enclosure No. Petition No. 1065 with 4 Sn. and 2 Engrossed Sheets in two files

Submitting the annexed proceedings connected with the appeal petition of Kapasipathaiah and his brother regarding the Shanbhogi of Kannadalli in the Kasipur taluk.

Regularised and recorded

Petition M
7-1-98
C.F 30 of 93 submitting to the Subject for put up.

AK
10/1/98

No. 771
Enclosure No. Petition with 4 Inclosures filed by Accepted

DEPUTY COMMISSIONER'S OFFICE,
MYSORE DISTRICT,
Dated Mysore 3rd January 1895.

To

The Secretary to the Government of Mysore,
Revenue and General Departments.

SIR,

I have called for in your official memorandum No. Pet 30-93 dated 21st December 1894, I have the honor to submit herewith the entire proceedings connected with the appeal petition of Rajan Chattiah and his brother Nanjayya residing at Seravampet Hyderabad, regarding the Shanbhogi of Kannadalli in the T. Narsipur Taluk.

The enclosures of the memorandum under reply are herewith returned.

I have the honor to be,
Sir
Your Most Obedient Servant

Deputy Commissioner
Mysore District

(12) Briefs.

4

Proceedings of the Privy Council

L.R. 19-97-4

Read para:-

Decision of Govt dated 27th July, 1895, in Appeal No 27 of 1892 (Rajaniparaiya Ampare Vs. Vanjendaiya alias Pattaiya, in re the Shanthoppi of Kannadi, N. Varaiyan Valia) declining to remove Vaik, Infamous of appellant, the officiating Shanthoppi Vanjendaiya, his uncle who succeeded his brother Rajaniparaiya (Rajaniparaiya's father) after the latter's dismissal in 1884 by direction of Rajaniparaiya's widow

Read also:-

(1) Petition of appeal No 40 of 1897-98, presented by the said Rajaniparaiya and his minor brother Vanjendaiya, against the decision of the Government

6

This appeal is dismissed, as the Dy. Commr. has decided the case in accordance with that order.

Draft-

C/L.

For Secretary

10/3/98

To The Deputy-Commr. Mysore District with + records.

+ ಪಿ-ನಂ-ಅಂಚೆಪತ್ರ
12-3-98 ಕಳಿಸಿದರು

Supreme District, in Revenue Regular

Appeal No 10 of 1896-97 preferring the judgment of the 1st General Assistant-Commissioner who had decided, in favour of Respondents, the regular suit filed by him and his brother in 1894 for recovery of the said Shanbhogs office from Respondents Ranganaiky.

(2) Records of the case, received with the Supreme Deputy-Commissioners letter No 771 dated 5th January 1898.

P

(128)

Order thereon No 8484. / F 30-93 / 11-3-98 / 12

No sufficient grounds have been made out to interfere with the order of Government dated 27th July 1893, which was passed after hearing all the parties concerned.

This

dismissing the plaintiffs suit for recovery of Kaivharumbage of Kannahalli